

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 18, 2005 Division: Growth Management
Bulk Item: Yes ☐ No ☒ Department: Planning
Staff Contact Person: K. Marlene Conaway

AGENDA ITEM WORDING:

Public hearing to consider an Interim Development Ordinance (IDO) deferring the acceptance of applications for redevelopment and conversion of marine facilities including commercial marinas and working waterfront within 365 days of the effective date of the Ordinance or when the comprehensive plan and land development regulations become effective, whichever comes first. (Second of two public hearings)

ITEM BACKGROUND:

Monroe County is experiencing the loss of and redevelopment of marine facilities including commercial marinas and the working waterfront including boatyards, wet storage, fish houses and commercial fishing vessel dockage at an unprecedented rate. The County finds that it is necessary to enact an Interim Development Ordinance deferring the acceptance of development applications that seek development approval for the redevelopment and conversion of marine facilities and working waterfront properties.

The County has contracted with South Florida Regional Planning Council to prepare a public water access and marine facilities plan and develop implementation measures including Comprehensive Plan and Land Development Regulations.

At the March 10, 2005 public meeting of the Development Review Committee, the Committee voted to recommend approval of the proposed IDO to the Planning Commission. At the March 23, 2005 public meeting of the Planning Commission, the Commission continued the item to the April 13, 2005 Planning Commission in Marathon. At the April 13, 2005 Planning Commission meeting, the Commission heard the item but was unable to recommend action to the Board of County Commissioners (BOCC). It is anticipated that at the May 11, 2005 Planning Commission, the Commission will recommend action to the BOCC.

The IDO attached for BOCC review has been revised at the request of the County Attorney. The revisions were requested to provide a more readable format. The previous draft, which shows edits (underlines and strike-throughs) were made by Tyson Smith, Esquire, of White and Smith, is attached for your information only. The County Attorney did not make substantive changes from the Tyson Smith draft.

PREVIOUS REVELANT BOCC ACTION:

The BOCC at a regular meeting on January 19, 2005, directed staff to prepare an interim development ordinance to prevent further redevelopment and conversion of marine facilities including commercial marinas and the working waterfront, and to implement a policy of "No-Net-Loss" of public access to marine facilities while County legislation is being prepared. The BOCC conducted the first of two public hearings on April 20, 2005.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval

TOTAL COST: N/A

BUDGETED: Yes ☐ No ☒ N/A

COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes ☒ No ☐ AMOUNT PER MONTH N/A Year ☐

APPROVED BY: County Attorney ☐ OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL:


Timothy J. McGarry, AICP

DOCUMENTATION: Included ☒ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # _____

INTERIM DEVELOPMENT ORDINANCE

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING THE ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR THE REDEVELOPMENT AND CONVERSION OF MARINE FACILITIES INCLUDING COMMERCIAL MARINAS AND THE WORKING WATERFRONT UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRANSMITTAL TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA); AND PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THE ORDINANCE OR WHEN THE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST.

RECOMMENDATIONS

DRC:	Approval	March 10, 2005	
PC:	To Be Determined	May 11, 2005	Resolution #P -05

DRAFT BOCC ORDINANCE

INTERIM DEVELOPMENT ORDINANCE
DEFERMENT OF DEVELOPMENT APPLICATIONS
FOR THE
REDEVELOPMENT AND CONVERSION
OF MARINE FACILITIES AND THE WORKING WATERFRONT

BOARD OF COUNTY COMMISSIONERS
KEY LARGO
May 18, 2005

ORDINANCE NO. _____ 2005

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING THE ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR THE REDEVELOPMENT AND CONVERSION OF MARINE FACILITIES INCLUDING COMMERCIAL MARINAS AND THE WORKING WATERFRONT UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRANSMITTAL TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA); AND PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THE ORDINANCE OR WHEN THE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. Section 9.5-185 of the Monroe County Code is hereby created to read as follows:

Section 9.5-185. Interim Development Provisions Relating To Working Waterfront Areas And Public Access To Beaches And Shorelines.

1. Definitions. As used in this Ordinance, the following terms shall have the definitions provided, unless the context clearly provides otherwise:

a. "Commercial marina" shall mean any facility or facilities, having three or more slips, docks, or docking spaces, conducting business involving the sale, repair, rental, storage, and servicing of boats, and including accessory retail uses. The term includes a licensed commercial facility which provides secured public moorings or wet ~~dry~~ storage for private pleasure vessels or commercial vessels on a leased basis. The term does not include privately owned individual berths or docks accessory to land based dwelling units.

b. "Existing structures and uses" shall mean a structure in existence as of February 28, 2005, and the customary and regular uses of that structure up to and including February 28, 2005.

c. "Marine facility" shall mean commercial marinas, the working waterfront, boat ramps, and any other locations that provide public access to the navigable waters of the state.

d. "Public access" shall mean the ability of the public to physically reach, enter, or use beaches and shores. The term shall have the same meaning as defined in Rule 9J-5.003(97), Florida Administrative Code.

e. "Working waterfront" shall mean a parcel or parcels of real property that are used for water dependent boatyards, wet ~~and dry~~ storage of boats and vessels, commercial fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage. The term does not include commercial marinas providing dockage for pleasure watercraft.

f. "Water-dependent uses" shall mean activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, including ports or marinas, and recreation. The term shall have the same meaning as defined in Rule 9J5-003(137), Florida Administrative Code.

g. "Water-enhanced uses" shall means activities that are not water-dependent uses but benefits economically or aesthetically by its location adjacent to or on the waterfront. The term includes dock side bars, restaurants, hotels, motels, and residential uses.

2. Findings by Board of County Commissioners. The Board of County Commissioners, based upon minutes of prior meetings of the Board, presentations of staff, comments by the public, provisions of Florida Statutes and Florida Administrative Code Rules, and Monroe County public records, hereby finds as follows:

a. The Board of County Commissioners at a public meeting held on August 18, 2004, directed county staff to have a public water access and marine facilities plan prepared for Monroe County.

b. The Board of County Commissioners discussed a policy of "No Net Loss" of working waterfront or public access at a public meeting held on December 16, 2004.

c. Monroe County is experiencing the loss of working waterfront and the loss of public access due to the redevelopment of marine facilities, commercial marinas, and the working waterfront, including boatyards, wet ~~and dry~~ storage of vessels and boats, fish houses and commercial fishing vessel dockage, at an unprecedented rate.

d. The continued loss of working waterfront and public access in the County is and will be detrimental to the economic and social well-being and the health, safety, and welfare of the citizens of Monroe County.

e. If the Comprehensive Plan and land development regulations are not amended to control certain conversions and redevelopments, future losses of working waterfront and public access will negatively affect the economy and bring an end to critical marine-related services, including boat yards, commercial marinas that are available to the public, and traditional trades associated with commercial fishing.

f. It is necessary to undertake a comprehensive and deliberate analysis of the economic, social, and quality of life implications of continued conversions and redevelopments and the impact of same on the public access and the working waterfront.

g. Preserving the status quo while undertaking the analysis will ensure that the County's problems related to diminished public access and further loss of working waterfront will not be

exacerbated during the time it takes to prepare a well-reasoned and equitable planning and regulatory program.

h. Preserving the status quo for a temporary period of time will prevent development that could be inconsistent with the Comprehensive Plan and/or with pending changes to the Comprehensive Plan or land development regulations.~~;~~~~and~~

i. A number of waterfront property owners are exploring the possible change of use of their property to private residential uses and private exclusive use of docks and docking spaces which will further decrease the public access and/or working waterfront.

j. Goal 212 of the 2010 Comprehensive Plan provides that "Monroe County shall prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County".

k. Goal 213 of the 2010 Comprehensive Plan provides that "Monroe County shall ensure adequate public access to the beach or shoreline.

l. Objective 502.1 of the 2010 Comprehensive Plan provides, in pertinent part, that Monroe County shall promote the preservation and enhancement of the existing ports and port related activities.

m. Monroe County needs to update and augment its inventory of public access and waterfront facility locations and specific waterfront uses in order to have a thorough and accurate understanding of the socio-economic data relating to the existing situation.

n. Accepting or processing of development applications during the term of this ordinance would result in confusion for property owners, inefficiencies in governmental services, potentially redundant review processes, and may unreasonably affect the expectations of property owners.

o. The approval of development applications for working waterfront property conversions and redevelopment will result in the continued and irreversible loss of public access and working waterfront.

p. The exemption of certain specified uses and development activities advances the intent of this Ordinance and will not diminish public access or further the loss of working waterfront.

q. The Board of County Commissioners recognizes the need to develop comprehensive plan and land development regulations and programs to preserve marine facilities, including commercial marinas, and to protect public access and the working waterfront.

r. The Board of County Commissioners at a public meeting held on January 19, 2005, voted to contract with the South Florida Regional Planning Council to prepare a public access and marine facilities plan and suggested implementation measures, including Comprehensive Plan amendments and Land Development Regulations.

s. Monroe County has committed necessary staff and resources to the development of policies and regulations relating to the working waterfront and public access.

t. This interim Ordinance and the planned amendments to the Comprehensive Plan and Land Development Regulations are necessary to protect the health, safety, and general welfare and to advance the policies set forth in the Comprehensive Plan.

u. The utilization of the moratorium device as a temporary measure to facilitate government decision making, study and adoption of comprehensive plan and land development regulations is a legitimate governmental tool to facilitate logical and considered growth and is a means of avoiding inefficient and ill-conceived development.

v. The Board of County Commissioners finds that it is necessary to enact an Interim Development Ordinance deferring the acceptance of development applications that seek development approval for the conversion or redevelopment of waterfront properties.

w. The Board of County Commissioners finds that a 365-day deferment of development applications and approvals as provided herein is reasonable and is the minimum necessary to protect the health, safety, and general welfare of the citizens of Monroe County and to implement the Comprehensive Plan.

x. The temporary deferral of development applications and approvals as provided in this Ordinance is not intended nor shall it be construed to inhibit the existing lawful use of properties in accordance with the Comprehensive Plan and land development regulations.

y. Chapter 125, Florida Statutes, authorizes the Board of County Commissioners to adopt ordinances to provide standards protecting against imminent and immediate threat to the health, safety and welfare of the citizens of Monroe County.

z. This Interim Development Ordinance constitutes a valid exercise of the County's police power and is otherwise consistent with Sections 163.316, *et seq.*, Florida Statutes, which, *inter alia*, encourages the use of innovative land development regulations, including provisions like moratoria to implement the adopted Comprehensive Plan.

aa. The Board of County Commissioners at a public meeting held on January 19, 2005, directed staff to prepare an ordinance deferring acceptance of applications for redevelopment of marine facilities, including commercial marinas and the working waterfront (boatyards, wet ~~and dry~~ vessel and boat storage, fish houses and commercial fishing vessel dockage), that would diminish public access or further result in the loss of working waterfront, while staff prepares amendments to the 2010 Comprehensive Plan and Land Development Regulations.

bb. As directed by the Board of County Commissioners, the Growth Management staff immediately undertook the development of this Interim Development Ordinance and preparation of a contract for the development of a public access and marine facilities plan and suggested implementation measures including Comprehensive Plan amendments and Land Development Regulations.

cc. The Monroe County Planning Commission reviewed the draft Interim Development Ordinance at a public hearing held on May 11, 2005, and has recommended approval of the ordinance to the Board of County Commissioners.

dd. The Board of County Commissioners has reviewed and considered the draft Interim Development Ordinance recommended by the Planning Commission and Planning staff.

3. Purpose and Intent. This Interim Development Ordinance implements the Board of County Commissioners' intent to temporarily curtail further redevelopment and conversion of marine facilities that result in the loss of working waterfront and diminish public access, in order to implement the Commission's policy of "No-Net-Loss" of working waterfront and public access while legislation is being prepared.

4. Exemptions.

a. The provisions of this Ordinance shall not apply to a development under an approved Conditional Use Permit; general maintenance, repair and/or safety improvements; and shall not apply to any modification, improvement, or expansion to existing marine facility that does not diminish public access and does not result in the loss of working waterfront.

b. The provisions of this Ordinance shall not apply to an application for a building permit or development approval submitted to the County on or before February 28, 2005.

c. The provisions of this Ordinance shall not apply to an application for or issuance of a building permit or development approval for any development or redevelopment that is otherwise allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

5. Application of Ordinance. This Ordinance shall be applicable to redevelopment and conversion of existing uses and structures which involve:

a. Any change of use of a commercial marina from a water-dependent use to a water-enhanced or a non-water-dependent use.

b. Any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership.

c. Any modification, improvements or expansions of existing marine facilities which would diminish public access or result in a loss of working waterfront.

d. Any change of use of a parcel of parcels of working waterfront to a commercial marina or a non-water dependent use.

6. Moratorium.

a. Commencing on the effective date of this Ordinance, a moratorium shall be in effect within unincorporated Monroe County relating to, and prohibiting:

1). Accepting or processing development applications relating to redevelopment or conversion of existing uses and structures as listed in sub-sections 5a through 5d.

2). Issuance of building permits for redevelopment or conversion of existing uses and structures as listed in sub-sections 5a through 5d.

3). Issuance of development orders and development permits of existing uses and structures as listed in sub-sections 5a through 5d.

b. Any application for a building permit or development approval, submitted on or after March 1, 2005, for any development or redevelopment of structures or uses identified in sub-section 5 shall not be accepted or processed by the Growth Management Division.

7. Interim Regulations. Pursuant to its lawful authority and the pending legislation doctrine as set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA, 1980), the Board of County Commissioners hereby establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until the date the Comprehensive Plan amendments and Land Development Regulations become effective, or until repeal of this Ordinance, whichever first occurs.

8. Administrative Appeal. Any property owner adversely affected by the application of this Ordinance may seek an administrative determination that the owner's proposed development or redevelopment met the vested rights standards set forth in Section 9.5-181, Monroe County Code, prior to the effective date of this Ordinance. To request an administrative determination, the property owner shall file an Application For Determination of Vested Rights with the Director of Growth Management. The application, together with an administrative filing fee of Four Hundred Dollars (\$400.00), must be filed within sixty (60) days from the effective date of this Ordinance.

9. Duty of County Administrator. The County Administrator is directed to have the Growth Management Division immediately begin preparing draft amendments, regulations and other supporting studies, in cooperation with the Monroe County Planning Commission, to address the issue of redevelopment and conversion of marine facilities that result in diminished public access or loss of working waterfront.

10. Repealer Provision. This ordinance shall stand repealed as of 11:59 p.m. on the 365th day after the effective date of the Ordinance, unless repealed sooner by the Board of County Commissioners or upon the adoption by the Board of County Commissioners and approval by the Florida Department of Community Affairs of amendments to the Comprehensive Plan and Land Development Regulations addressing public access and marine facilities.

Section 2. If any section, subsection, sentence, clause, item, charge or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 4. This ordinance shall be transmitted to the Florida Department of Community Affairs pursuant to Chapter 380, Florida Statutes, and the DCA is requested to review and approve it by Immediate Final Order in accordance with Section 120.569(2)(n), Florida Statutes, in recognition of the public importance of retaining the working waterfront, marine facilities, and public access, and to prevent the threat of further loss thereof as "an immediate danger to the public health, safety, or

welfare”.

Section 5. This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving this ordinance pursuant to Florida Statutes, Chapter 380.

Section 17. This ordinance shall stand repealed as of 11:59 p.m. on the 365th day after the effective date of the Ordinance, unless repealed sooner by the Board of County Commissioners or upon the adoption by the Board of County Commissioners and approval by the Florida Department of Community Affairs of amendments to the Comprehensive Plan and Land Development Regulations addressing public access and marine facilities.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ____ day of _____, 2005.

Mayor Dixie Spehar	_____
Mayor Pro Tem Charles “Sonny” McCoy	_____
Commissioner Murray Nelson	_____
Commissioner George Neugent	_____
Commissioner David Rice	_____

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

BY _____
Mayor Dixie Spehar

(SEAL)

ATTEST:

DANNY L. KOLHAGE, CLERK

By: _____
Deputy Clerk



BOCC STAFF REPORT

Memo

May 3, 2005

TO: Board of County Commissioners

FROM: K. Marlene Conaway, Director of Planning and Environmental Resources

RE: Interim Development Ordinance-Marine Facilities and Working Waterfronts

MEETING DATE: May 18, 2005

Summary

The Board of County Commissioners (BOCC) at a regular meeting on January 19, 2005, directed Growth Management staff to prepare an Interim Development Ordinance (IDO) deferring the acceptance of applications for redevelopment and conversion of marine facilities including commercial marinas and the working waterfront (boatyards, wet storage, fish houses and commercial fishing vessel dockage) while staff prepares amendments to the 2010 Comprehensive Plan and Land Development Regulations (LDR). Concurrently, following direction of the BOCC at the same regular meeting on January 19, 2005, Growth Management staff immediately undertook the development of this Interim Development Ordinance and preparation of a contract for the development of a public water access and marine facilities plan and implementation measures including 2010 Comprehensive Plan and Land Development Regulations.

This IDO provides for specific exemptions and clarifying definitions. Since the April 20, 2005 BOCC hearing, dry storage has been removed from the definition of the working waterfront. The IDO is to expire within 365 days from the effective date of the Ordinance, or when the 2010 Comprehensive Plan and LDR amendments become effective, whichever comes first.

The IDO attached for BOCC review has been revised at the request of the County Attorney. The revisions were requested to provide a more readable format. The previous draft, which shows edits (underlines and strike-throughs) were made by Tyson Smith, Esquire, of White and Smith, is attached for your information only. The County Attorney did not make substantive changes from the Tyson Smith draft.

Background

Monroe County is experiencing the loss of and redevelopment of marine facilities and the working waterfront including commercial marinas, boatyards, wet storage, fish houses and commercial fishing vessel dockage, at an unprecedented rate. A number of waterfront owners are exploring the possible change of use of their property, to private residential uses and private exclusive use of dockage which will further decrease the public access and working waterfront usages. There is great concern that if nothing is done to control this redevelopment that future losses of waterfront facilities will negatively affect the economy and bring an end to critical marine services (e.g. boatyards), commercial marinas that are available to the public and traditional trades associated with commercial fishing and other water-dependent uses. The

pressure to redevelop waterfront properties to non-water related or non-water dependent type uses is such that unless acceptance of such applications is deferred, there is not time to write land development regulations or Comprehensive Plan amendments to adequately address the probable negative impacts of the rapid rate of change.

The County does not have an accurate inventory of pertinent waterfront facility locations and specific waterfront uses and a thorough understanding of the socio-economic data on existing waterfront marine facilities. However, the County recognizes the need to develop comprehensive plan and land development regulations and programs to preserve marine facilities including commercial marinas and the working waterfront. A "no net loss" of public access to the waterfront policy was discussed by the BOCC at their December 16, 2004, meeting. To meet these needs, the Board of County Commissioners, at their meeting of August 18, 2004, directed staff to have a public water access and marine facilities plan prepared for Monroe County. At their meeting of January 19, 2005, the BOCC voted to contract with the South Florida Regional Planning Council to prepare the public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulation amendments.

The contract to prepare the plan and implementation measures is further substantiated by Goal 212 of the 2010 Comprehensive Plan which directs the County to prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County; Goal 213 of the 2010 Comprehensive Plan which directs the County to ensure adequate public access to the beach or shoreline; and Objective 502.1 of the 2010 Comprehensive Plan which direct the County to promote the preservation and enhancement of the existing ports and port related activities.

Furthermore, the Florida State Senate and House of Representative are reviewing a proposed bills, SPB 7040 and HB955CS 2005, which will include enunciating the State's interest in maintaining recreational and commercial working waterfronts and public access to waterfront property, and require the future land use plan element of local comprehensive plans for coastal counties to include criteria to encourage the preservation of recreational and commercial working waterfronts. Provision of tax incentives and deferrals are also included. The confidence level of this legislation passing is high.

The purpose of the proposed deference of accepting applications is to provide time for the preparation of the public water access and marine facilities plan and implementation measures by the South Florida Regional Planning Council. This IDO will also provide time for staff to draft the necessary Land Development Regulations and 2010 Comprehensive Plan amendments, the Planning Commission to review the proposed changes and the public time to consider, understand and comment on the amendments. Monroe County is acting expeditiously by proposing this Interim Development Ordinance so that Comprehensive Plan and LDR amendments can be developed which will be in coordination with the pending State legislation.

The IDO attached for BOCC review has been revised at the request of the County Attorney. The revisions were requested to provide a more readable format. The previous draft, which shows edits (underlines and strike-throughs) were made by Tyson Smith, Esquire, of White and Smith, is attached for your information only. The County Attorney did not make substantive changes from the Tyson Smith draft.

This Ordinance shall be applicable to redevelopment and conversion of existing uses and structures which involve:

a. Any change of use of a commercial marina from a water-dependent use to a water-enhanced or a non-water-dependent use.

b. Any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership.

c. Any modification, improvements or expansions of existing marine facilities which would diminish public access or result in a loss of working waterfront.

d. Any change of use of a parcel or parcels of working waterfront to a commercial marina or a non-water dependent use.

As used in this Ordinance, the following terms shall have the definitions provided, unless the context clearly provides otherwise:

a. "Commercial marina" shall mean any facility or facilities, having three or more slips, docks, or docking spaces, conducting business involving the sale, repair, rental, storage, and servicing of boats, and including accessory retail uses. The term includes a licensed commercial facility which provides secured public moorings or wet storage for private pleasure vessels or commercial vessels on a leased basis. The term does not include privately owned individual berths or docks accessory to land based dwelling units.

b. "Existing structures and uses" shall mean a structure in existence as of February 28, 2005, and the customary and regular uses of that structure up to and including February 28, 2005.

c. "Marine facility" shall mean commercial marinas, the working waterfront, boat ramps, and any other locations that provide public access to the navigable waters of the state.

d. "Public access" shall mean the ability of the public to physically reach, enter, or use beaches and shores. The term shall have the same meaning as defined in Rule 9J-5.003(97), Florida Administrative Code.

e. "Working waterfront" shall mean a parcel or parcels of real property that used for water dependent boatyards, wet storage of boats and vessels, commercial fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage. The term does not include commercial marinas providing dockage for pleasure watercraft.

f. "Water-dependent uses" shall mean activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, including ports or marinas, and recreation. The term shall have the same meaning as defined in Rule 9J5-003(137), Florida Administrative Code.

g. "Water-enhanced uses" shall means activities that are not water-dependent uses but benefits economically or aesthetically by its location adjacent to or on the waterfront. The term includes dock side bars, restaurants, hotels, motels, and residential uses.

Dry storage has been removed from the definition of working waterfront.

The following exemptions are provided in this Ordinance:

- The provisions of this Ordinance shall not apply to a development under an approved Conditional Use Permit; general maintenance, repair and/or safety improvements; and shall not apply to any modification, improvement, or expansion to existing marine facility that does not diminish public access and does not result in the loss of working waterfront.
- The provisions of this Ordinance shall not apply to an application for a building permit or development approval submitted to the County on or before February 28, 2005.
- The provisions of this Ordinance shall not apply to an application for or issuance of a building permit or development approval for any development or redevelopment that is otherwise allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

Staff Recommendation

The Planning Staff recommends the Monroe County Board of County Commissioners **APPROVE** the attached Interim Development Ordinance deferring development applications for the redevelopment and conversion of marine facilities and the working waterfront.

Attachment: Draft showing edits (underlines and strike-throughs) by Tyson Smith, Esquire, Smith and White, for BOCC information only.

ORDINANCE NO. _____ 2005

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING THE ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR THE REDEVELOPMENT AND CONVERSION OF MARINE FACILITIES INCLUDING COMMERCIAL MARINAS AND THE WORKING WATERFRONT UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRANSMITTAL TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA); AND PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THE ORDINANCE OR WHEN THE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST.

WHEREAS, the Board of County Commissioners at their meeting of August 18, 2004, directed staff to have a public water access and marine facilities plan prepared for Monroe County; and

WHEREAS, the Board of County Commissioners discussed a policy of "No Net Loss" of working waterfront or public access to the waterfront ~~policy~~ at their December 16, 2004 meeting; and

WHEREAS, Monroe County is experiencing the loss of ~~and~~ working waterfront and the loss of public access to the water due to the redevelopment of marine facilities, including commercial marinas, and the working waterfront, including boatyards, wet ~~and dry~~ storage, fish houses and commercial fishing vessel dockage, at an unprecedented rate; and

WHEREAS, the continued loss of working waterfront and public access in the County is and will be detrimental to the economic and social wellbeing and the health, safety, and welfare of the citizens of the County; and

WHEREAS, ~~there is a great concern that if nothing is done if the Comprehensive Plan and land development regulations are not amended to control certain conversions and this~~ redevelopments, future losses of waterfront facilities ~~working waterfront and public access will negatively affect the economy and bring an end to critical marine services (e.g. boat yards), commercial marinas that are available to the public, and traditional trades associated with commercial fishing; and~~

WHEREAS, it is necessary to undertake a comprehensive and deliberate analysis of the economic, social, and quality of life implications of continued conversions and redevelopments and the impact of same on the public access and working waterfront; and

WHEREAS, preserving the status quo while undertaking said analysis will ensure that

Draft showing edits (underlines and strike-throughs) by Tyson Smith, Esquire, Smith and White, for BOCC information only.

the County's problems related to diminished public access and loss of working waterfront will not be exacerbated during the time it takes to prepare a well-reasoned and equitable planning and regulatory program; and

WHEREAS, preserving the status quo for a temporary period of time will prevent development that could be inconsistent with the Comprehensive Plan and/or with pending changes to the Comprehensive Plan or land development regulations; and

WHEREAS, a number of waterfront owners are exploring the possible change of use of their property to private residential uses and private exclusive use of dockage which will further decrease the public access and/or working waterfront; and

WHEREAS, Goal 212 of the 2010 Comprehensive Plan directs the County to prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County; and

WHEREAS, Goal 213 of the 2010 Comprehensive Plan directs the County to ensure adequate public access to the beach or shoreline; and

WHEREAS, Objective 502.1 of the 2010 Comprehensive Plan directs the County to promote the preservation and enhancement of the existing ports and port related activities; and

WHEREAS, the County ~~does not have an accurate~~ needs to update and augment its inventory of public access points, pertinent waterfront facility locations and specific waterfront uses in order to have ~~and a thorough and accurate understanding of the socio-economic data on existing waterfront marine facilities; and~~

WHEREAS, the acceptance or processing of development applications during the term of this ordinance would result in confusion for property owners, inefficiencies in governmental services, and potentially redundant review processes and may unreasonably affect the expectations of property owners; and

WHEREAS, the approval of development applications for conversions and redevelopment, as described herein, will result in the continued and irreversible loss of public access and working waterfront; and

WHEREAS, the exemption of certain uses and development activities, as provided herein, advances the intent of this Ordinance and will not diminish public access or further the loss of working waterfront; and

WHEREAS, the County recognizes the need to develop comprehensive plan and land

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development regulations and programs to preserve marine facilities including commercial marinas that offer public access and provide for working waterfront ~~that offer public access~~; and

WHEREAS, the Board of County Commissioners at their meeting of January 19, 2005, voted to contract with the South Florida Regional Planning Council to prepare the public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulations; and

WHEREAS, the County has committed necessary staff and resources to the development of these policies and regulations; and

WHEREAS, this interim Ordinance and the planned amendments to the Plan and land development regulations are necessary to protect the health, safety, and general welfare and to advance the policies set forth in the Comprehensive Plan; and

WHEREAS, the utilization of the moratorium device as a temporary measure to facilitate government decision making, study and adoption of comprehensive plan and land development regulations is a legitimate governmental tool to facilitate logical and considered growth and as a means of avoiding inefficient and ill-conceived development; and

WHEREAS, the County finds that it is necessary to enact an Interim Development Ordinance deferring the acceptance of development applications that seek development approval for the redevelopment of waterfront properties; and

WHEREAS, the County finds that a 365-day deferment of development applications and approvals as provided herein is reasonable and is the minimum necessary to protect the health, safety, and general welfare of the citizens of the County and to implement the Comprehensive Plan; and

WHEREAS, the temporary deferral of development applications and approvals, as provided herein, are not intended nor shall it be construed to inhibit the existing lawful use of properties in accordance with the Comprehensive Plan and land development regulations; and

WHEREAS, Chapter 125, F.S. authorizes the Board of County Commissioners to adopt ordinances to provide standards protecting against imminent and immediate threat to the health, safety and welfare of the citizens of Monroe County; and

WHEREAS, this Interim Development Ordinance constitutes a valid exercise of the County's police power and is otherwise consistent with Section 163.316, *et seq.*, F.S., which, *inter alia*, encourages the use of innovative land development regulations including provisions like moratoria to implement the adopted comprehensive plan; and

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WHEREAS, the Board of County Commissioners at a regular meeting on January 19, 2005, directed staff to prepare an ordinance deferring acceptance of applications for redevelopment of marine facilities including commercial marinas and the working waterfront (boatyards, wet ~~and dry~~ storage, fish houses and commercial fishing vessel dockage) that would diminish public access or result in the loss of working front, while staff prepares amendments to the 2010 Comprehensive Plan and Land Development Regulations; and

WHEREAS, following direction of the Board of County Commissioners, the Growth Management staff immediately undertook the development of this Interim Development Ordinance and preparation of a contract for the development of a public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulations; and

WHEREAS, the Planning Commission has reviewed the draft Interim Development Ordinance and considered ~~recommended~~ approval to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners has reviewed and considered the draft Interim Development Ordinance recommended by the ~~Planning Commission~~ and Planning staff; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. The purpose and intent of this Interim Development Ordinance is to implement the Board of County Commissioners' directive of January 19, 2005, to prepare an interim development ordinance to prevent further redevelopment and conversion of marine facilities ~~including commercial marinas and the working waterfront~~, that result in the loss of working waterfront and diminish public access and in order to implement a policy of "No-Net-Loss" of working waterfront and public access to marine facilities while legislation is being prepared.

Section 2. Except as provided for in Section 5 of this ordinance, ~~R~~redevelopment and conversion of existing uses and structures, as used in this ordinance, includes the following:

- Any change of use from a water dependent use to a water enhanced or a non-water dependent use of a commercial marina.
- Any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership.
- Any modification, improvements or expansions of existing marine facilities, ~~resulting in the loss of public access from both land and water to the waterfront and water body.~~
- Any change of use of the working waterfront to a commercial marina or a non-water dependent use.

Section 3. The following definitions apply in this ordinance:

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- Existing uses and structures means those uses and structures in existence prior to and including February 28, 2005.
- Commercial marina means a facility with three or more slips for the mooring, berthing, storing or securing of watercraft and may include accessory retail and service uses, but not including docks accessory to land based dwelling units or individual berths under private ownership.
- Marine facility means commercial marinas, the working waterfront, and any other public access point including boat ramps that provide public access to the navigable waters of the state.
- Public access means the ability of members of the public to physically reach, enter, or use a water-body by either land or water.
- Working waterfront means a parcel or parcels of real property that provide access for water dependent boatyards, wet ~~and dry~~ storage, fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage; it does not mean commercial marinas for the dockage of pleasure craft.
- Water dependent use means a use or portions of a use that can only be carried out on, in or adjacent to water areas because the use requires access to the water body.
- Water enhanced use means a use that is not a water dependent use but benefits economically or aesthetically by its location on the waterfront; examples include restaurants, hotels and residential uses.

Section 4. During the time this ordinance is in effect as specified herein, there shall be a moratorium upon the issuance of building permits, acceptance of development applications or issuance of development orders and development permits within unincorporated Monroe County concerning the redevelopment or conversion of existing uses and structures related to marine facilities, including commercial marinas and the working waterfront, that result in diminished public access or loss of working waterfront, except as provided herein.

Section 5. Exempt from this ordinance ~~is~~ are the following:

- Development under an approved Conditional Use Permit, general maintenance, repair and/or safety improvements; and,
- Any modification, improvements, or expansion to existing marine facility that does not diminish public access and does not result in the loss of working waterfront.

Section 6. Pursuant to its lawful authority and the pending legislation doctrine as set forth in Smith v. City of Clearwater, 383 So.2d 681 (Fla. 2d DCA, 1980) the Board of County Commissioners hereby establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until the expiration of this legislation

within one year of its effective date or whenever the plan and land development regulations become effective, whichever comes first.

Section 7: Until expiration of this Interim Development Ordinance no application for a building permit or development approval for any development or redevelopment, that meets the criteria for review identified in Section 2 hereof, shall be granted pursuant to an application or request with a submittal date of March 1, 2005, or later.

Section 8: Any application for a building permit or development approval with a submittal date of February 28, 2005, or earlier shall be exempt from this Interim Development Ordinance.

Section 9: As of the effective date of this Ordinance no application for a building permit or development approval, meeting the criteria for review identified in Section 2 hereof, shall be accepted or processed by the Growth Management Division, except applications exempt hereunder and development awarded a vested rights determination pursuant to Section 11 hereof.

Section 10: This Ordinance shall not be construed to prohibit the application for or issuance of a building permit or development approval for any development or redevelopment that does not meet the criteria for review identified in Section 2 hereof, or that does not result in diminished public access or the loss of working waterfront, that is allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

Section 11: Any property owner adversely affected by the provisions of this Interim Development Ordinance may seek a determination that the owner's proposed development or redevelopment is vested against the provisions of this Interim Development Ordinance, by filing with the Director of Growth Management, together with an administrative fee in the amount of \$400, a vested rights application setting forth facts establishing the applicant met, prior to the date that this Ordinance is adopted by the Board of Monroe County Commissioners, the vested rights standards set forth in Section 9.5-181, Monroe County code. Such application must be filed no later than sixty (60) days after the effective date of this ordinance.

Section 12: The County Administrator is directed to have the Growth Management Division begin immediately preparing the draft text amendments and other supporting studies in cooperation with the Planning Commission in order to address the issue of redevelopment and conversion of marine facilities that result in diminished public access or the loss of working waterfront.

Section 13. If any section, subsection, sentence, clause, item, charge or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 14. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 15. The ordinance is hereby transmitted to the Florida Department of Community Affairs pursuant to Chapter 380, Florida Statutes and the DCA is requested to review and approve it by Immediate Final Order in accordance with F.S.120.569(2)(n), in recognition of the public importance of retaining the working waterfront, marine facilities, and public access to the waterfront, and to prevent the threat of further loss thereof as "an immediate danger to the public health, safety, or welfare".

Section 16. This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving ordinance pursuant to Florida Statutes, Chapter 380.

Section 17. This ordinance shall stand repealed as of 11:59 p.m. on the 365th day after the effective date of the Ordinance, unless repealed sooner by the Board of County Commissioners or upon the adoption of amendments to the comprehensive plan and land development regulations addressing public access and marine facilities.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ____ day of _____, 2005.

Mayor Dixie Spehar _____

Mayor Pro Tem Charles "Sonny" McCoy _____

Commissioner Murray Nelson _____

Commissioner George Neugent _____

Commissioner David Rice _____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY _____

Mayor Dixie Spehar

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk